

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LABORATORY CORPORATION OF
AMERICA HOLDINGS

Employer

and

Case 22-RC-096952

DISTRICT 1199J, NUHHCE, AFSCME,
AFL-CIO

Petitioner

ORDER

The Employer's Request for Review of the Regional Director's denial of its motion to dismiss is denied as it raises no substantial issues warranting review.¹ The Employer's Request for Special Permission to Appeal the Regional Director's Direction of a Mail Ballot Election is granted. Because the Regional Director did not abuse his discretion, the appeal is denied on its merits.

MARK GASTON PEARCE, CHAIRMAN

RICHARD F. GRIFFIN, JR., MEMBER

SHARON BLOCK, MEMBER

Dated, Washington, D.C., April 2, 2013

¹The Employer contends that the Board lacks a quorum because the President's recess appointments are constitutionally invalid. We reject this argument. We recognize that the United States Court of Appeals for the District of Columbia Circuit has concluded that the President's recess appointments were not valid. See *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013). However, as the court itself acknowledged, its decision conflicts with rulings of at least three other courts of appeals. See *Evans v. Stephens*, 387 F.3d 1220 (11th Cir. 2004), cert. denied, 544 U.S. 942 (2005); *U.S. v. Woodley*, 751 F.2d 1008 (9th Cir. 1985); *U.S. v. Allocco*, 305 F.2d 704 (2d Cir. 1962). This question remains in litigation, and pending a definitive resolution, the Board is charged to fulfill its responsibilities under the Act. See *Sub-Acute Rehabilitation Center at Kearny*, 359 NLRB No. 77, slip op. 1, fn.1 (2013).